

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Xavier L. McCoy, # 234419,) C/A No. 4:10-1687-JFA-TER
)
Plaintiff,)
)
vs.) REPORT AND RECOMMENDATION
)
Mr. Lt. Meredith;)
Mr. Capt. Miller, and)
Ms. Dr. Parker; Individually Capacities and in they Official)
Capacities,)
)
Defendants.)
)

The plaintiff, Xavier McCoy, filed this action on July 2, 2010, alleging various claims for violations of his constitutional rights pursuant to 42 U.S.C. § 1983. The plaintiff is an inmate currently housed at the McCormick Correctional Institution (“MCI”). Before the undersigned is the plaintiff’s motion for default judgment. (Document #14.)¹

On August 4, 2010, plaintiff filed a motion for default judgment asserting that he submitted to the court a complaint form on July 2, 2010, and “more than 21 days have elapsed since the date on which the defendant herein were served with summons and a copy of plaintiff complaint.” (Doc. #14).

It is recommended that this motion for default judgment (doc. #14) be denied. Based on the court’s docket sheet, the court entered an Order authorizing service of process on July 30, 2010. (Doc. #9). Plaintiff filed this motion on August 4, 2010, before defendants were served. Defendant Miller was served on September 1, 2010, making his responsive pleading due on or before September 22, 2010. (Doc. #24).

¹All pretrial proceedings in this case were referred to the undersigned pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A) and (B) and Local Rule 73.02(B)(2)(d), DSC. Because this is a dispositive motion, the report and recommendation is entered for review by the district judge.

Defendants Miller and Meredith filed an answer to the complaint on September 22, 2010.² (Doc. #22). Defendant Parker was served on October 19, 2010, and filed an Answer on October 25, 2010. (Doc. #43).³ Therefore, defendants Miller, Meredith, and Parker filed a timely responsive pleading to the complaint. Accordingly, it is recommended that plaintiff's motion for default judgment be denied.

CONCLUSION

Based on the above reasoning, it is RECOMMENDED that plaintiff's motion for default judgment (doc. #14) be DENIED.

Respectfully submitted,

s/Thomas E. Rogers, III
Thomas E. Rogers, III
United States Magistrate Judge

November 1, 2010
Florence, South Carolina

The parties' attention is directed to the important notice on the next page.

² Based on the docket sheet, the return has been filed as executed as to Mr. Meredith indicated service on October 19, 2010. (Doc. #44).

³ In the answers, defendants Miller, Meredith, and Parker assert as one of their defenses that they have not been properly served, and the court lacks jurisdiction over the persons of the defendants.